

**Dear Readers,**

We are pleased to share with you the October issue of *HR Perspectives*.

The highlight of this issue is the proposed amendment to the Polish Labour Code concerning remote working. Finally, remote working will be regulated under the Labour Code. There are a few interesting proposals – the possibility to instruct employees to work remotely for safety reasons, introducing special occupational health and safety regulations and shifting some OHS duties to employees.

On 22 October this year, the Sejm also adopted regulations that stipulate remote work may be performed in the obligatory quarantine. The new regulations remove the existing doubts about whether an employee can work remotely in quarantine if the nature of performed work allows for it.

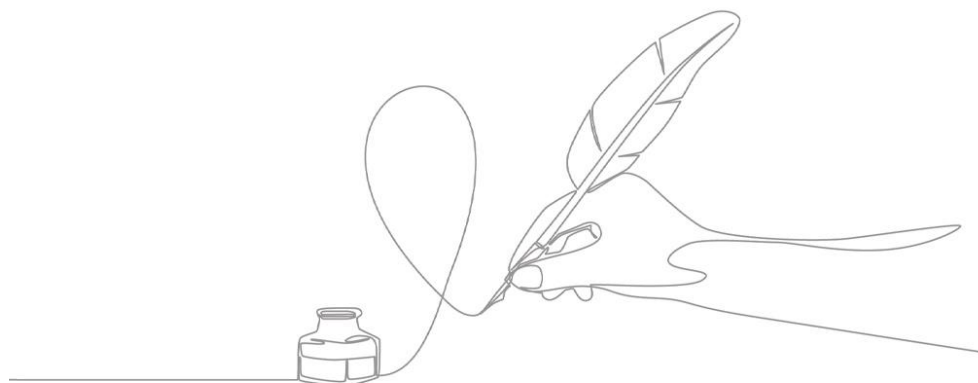
We also comment on the obligation to register contracts for specific work (umowy o dzieło) and the plans to apply social security contributions in full to contracts of mandate (umowy zlecenia). According to the regulations introduced by the anti-crisis laws, a natural person who orders specific work or a contribution remitter will be obliged to provide ZUS with information about the concluded contract for specific work. We discuss potential problems and consequences of such regulations.

Finally, a few words on what personal data is the employer allowed to process and collect from the employee in the context of restrictions aimed at preventing the spread of coronavirus.

**Enjoy your reading!**

**Sławomir Paruch,**

**Robert Stępień**



## Remote working soon in the Labour Code

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The draft amendment to the Labour Code provides for the replacement of the regulations on teleworking (which has not been particularly popular so far) with regulations on remote working. According to the draft, remote work will be considered as work performed entirely or partially outside the employer's seat or in another permanent workplace (indicated either in the employment contract or by the employer), in particular using means of direct remote communication.

The draft determines, among others, the form and rules of working out the conditions for the provision of remote work and for its cessation, as well as the specific obligations of the employer and employee.

The amendment provides for special OHS regulations on the account of the atypical place of remote work performance. It excludes some of the employer's obligations which cannot be fulfilled as the employer does not directly supervise the place where the employee performs work. The responsibility for the proper organisation of the workplace will be shifted onto the employee.

The draft identifies the groups of employees whose application for remote work will have to be accepted by the employer. They are: employees who bring up a child under 3 and parents of children with disabilities or requiring special care, including after they turn 18. Of course, this will depend on the nature of work carried out by the parent. If the work cannot be carried out remotely, the employer will not be obliged to accept the application.

The obligation to provide equipment and other materials necessary for performing work in this form will lie with the employer. As before, it will be possible for employees to use their own equipment, but in that case they will be entitled to reimbursement.

The rules for checking the performance of work are also an important part of the amendment. It will be possible upon the prior consent of the employee, and the check itself could be carried out within working hours and concern only the performance of work, maintenance and inventory, as well as OHS. However, the check must not violate the privacy of employees and their families or hinder the use of their private premises.

## Quarantine vs remote working

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According to the draft, during a state of epidemic or emergency, employees in compulsory quarantine can work remotely upon the prior consent of the employer. The provision applies not only to employees but also to other workers (e.g. contractors).

For the duration of remote working, the employee will be entitled to remuneration in the regular amount. Thus, the employee will not be entitled to sick pay or sickness benefit. Notably, remote working in quarantine must be approved by the employer. This means that the decision on whether an employee may work remotely and receive regular remuneration cannot be made single-handedly by this employee.

If the employer does not agree, the employee will be entitled to sick pay or sickness benefit. The draft will now proceed to the Senate for further legislative work.

### **Registration of contracts for specific work and plans to apply full range of social security contributions to contracts of mandate**

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The provisions of anti-crisis laws imposed additional information obligations on natural persons ordering specific work and contribution remitters. According to the laws, as of January 2021 they will be obliged to provide ZUS (Social Insurance Institution) with information about concluded contracts for specific work, within 7 days following their conclusion. These agreements will be recorded in the accounts of contribution remitters. This obligation will apply to contracts for specific work other than employment contracts and contracts under which natural persons perform work for their employers.

Although there are less than 2 months left until the above mentioned regulations enter into force, neither the notification templates nor the notification codes were provided (no relevant regulation in this respect has been issued yet).

The implementation of the above will enable ZUS to verify the social security obligation due on individuals performing contracts for specific work. ZUS may also verify whether the contract concluded with a given person should actually be a contract for specific work or rather a contract of mandate or a contract for the provision of services, which should be covered by obligatory insurance.

It is also planned that, as of January 2021, a full range of social security contribution will be applied to contracts of mandate. Currently, the obligation to pay social security contributions for contractors depends on whether the contract constitutes the only source of insurance for the contractor. If the contractor already pays social security contributions under other contract in the amount equal to or higher than the minimum wage, the contractor is exempt from paying additional contributions.

### **Collecting personal data of employees in the coronavirus era**

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Today, when all hands are on deck fighting against the pandemic, the question arises as to what kind of HR data can be processed by the employer (and thus how far can the employer delve into an employee's private life) in order to prevent the spread of the virus. The issue has been again brought to the fore by the recent decision of a supervisory authority in Hamburg, imposing a penalty of more than 35 million euro for the unlawful processing of employee data.

Can an employer ask where an employee is going on holiday or about plans for the weekend? Can the employer use statutory control measures, such as e-mail monitoring, to find it out?

When the collection of such data would be a violation of an employee's right to privacy and when would it be an act required by law to protect the life and health of employees or, more broadly, to protect public health?

It should be borne in mind that the data protection right is not absolute and must always be assessed in the light of other values. In this case, the other values at stake include the lives and health of employees, which every employer has an absolute duty to protect. To this end, the employer can use all appropriate means at its disposal.

However, this does not mean full freedom to collect data from employees. The processing of data in order to fight the pandemic is permitted as long as the rules laid down by GDPR and national legislation are complied with. Therefore, when introducing e.g. verification questionnaires or data collection applications, the scope of the collected data should, above all, be limited to bare essentials. Employees do not have to provide details of their weekend whereabouts or the Sunday service attendance – it would be enough to declare whether they attended an event associated with an increased risk of infection.

By the same token, it would be excessive to collect information on with whom exactly the employee has had close contact recently - in such a case it would be sufficient if the employee declared the lack of contact with any person with suspected or confirmed Covid-19. This is in line with the data minimisation principle. Other principles of data processing, such as the purpose or storage limitations, should not be forgotten. Equally important is ensuring that the rights of data subjects and information obligations are fulfilled. Compliance with these principles facilitates the lawful collection of employee data in line with the employer's basic duty, which is to ensure safe and hygienic working conditions.



### **Webinar: Legalisation of stay and work in Poland during the epidemic**

4 November 2020, 11:00 to 12:00.

Hosted by: Sławomir Paruch and Marcin Snarski, attorneys at law.

Please register [here](#).

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### **Webinar: Organisation of work in the 'new normal' - changes to teleworking and remote working arrangements**

19 November 2020, 11:00 to 12:00.

Hosted by: Łukasz Chruściel and Paweł Sych, attorneys at law.

Please register [here](#).